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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi the 13th August 1953

S.R.O 1619.—Whereas the election of Shri Devi Lal, as a member of the Legislative Assembly of the State of Punjab from the Sirsa constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Balwant Singh, son of Shri Madho Singh, Village Dhudiwali, Tehsil Sirsa; Shri Sardara, son of Shri Teja Village Chautala, Tehsil Sirsa, Shri Shera, son of Shri Duda, Village Chautala, Tehsil Sirsa, Shri Hari Ram, son of Shri Arjun, Village Chautala, Tehsil Sirsa, and Shri Basti Ram, son of Shri Lekh Ram, Village Chautala, Tehsil Sirsa,

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission,

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

BEFORE THE ELECTION TRIBUNAL, HISSAR

ELECTION PETITION No 192 of 1952

PRESENT

Shri Muharaj Kishore, Retired District & Sessions Judge—*Chairman.*

Shri Tek Chand Sethi, Retired District & Sessions Judge—*Member*

Shri Curbakhsh Singh Gyani, Bar-at-Law—*Member*

Shri Balwant Singh and others—*Petitioners*

Versus

- 1 Shri Devi Lal s/o Lekh Ram, jat of village Chautala, Tahsil Sirsa (Returned Candidate),
- 2 Shri Sheo Karan Singh, s/o Ballu Ram, jat of village Chautala, Tahsil Sirsa,
- 3 Shri Khub Ram, s/o Jowana, jat of village Chautala, Tahsil Sirsa;
- 4 Shri Ram Sarup s/o Nanu Ram, jat of village Kagdana, Tahsil Sirsa;
- 5 Shri Het Ram s/o Sukh Ram Dass, jat of village Madhosinghana, Tahsil Sirsa,
- 6 Shri Kanshi Ram s/o Jia Ram, jat of village Ding, Tahsil Sirsa;
- 7 Shri Sant Lal s/o Moti, chamar of Ellenabad, Tahsil Sirsa.

8. Shri Hira s/o Basti of village Rohranwali, Tahsil Sirsa;
9. Shri Sham Lal s/o Ratta Mal, Mahajan of Hissar;
10. Shri Lal Singh Gill of Mandi Dabwali, Tahsil Sirsa;
11. Shri Pat Ram s/o Polla, chamar of village Adampur, Tahsil and District Hissar—Respondents.

PRESENT:

Shri Nunya Mal, Advocate, with Ch. Devi Lal, Respondent.
 Shri Mahabir Parshad, Advocate, for the petitioners.

JUDGMENT

This is an election petition by Thakar Balwant Singh, Rajput, of village Dhudianwali, Ch. Sardara, Shera, Hari Ram and Basti Ram, jats of Village Chautala against the election of Ch. Devi Lal respondent No. 1 who was returned to the Punjab Legislative Assembly from the Sirsa constituency. The election in question took place from 2nd January to 16th January 1952 and respondent No. 1 was declared duly elected *vide* Punjab Government Gazette Notification dated 14th February 1952 having polled 18572 votes as against Ch. Shoo Karan Singh respondent No. 2 who secured 13863 votes.

The election in question was a straight fight between Ch. Devi Lal and Ch. Shoo Karan Singh and it is being challenged now by 5 voters of this constituency on the allegations made in the petition which practically cover all possible points which fall within the mischief of the Representation of the People Act, 1951.

The allegations made in the petition are that the nomination paper of Ch. Devi Lal was improperly accepted by the returning officer for the reasons mentioned in para 6, that the respondent had intimidated or coerced voters to vote for him as alleged in para 7, that the District Magistrate, Hissar Shri D. D. Kapila, canvassed for the respondent by touring in the constituency as detailed in para 9, that the respondent procured the withdrawal of the names of respondents Nos. 3 and 4 Shri Khub Ram and Shri Ram Sarup by offering illegal gratification in the form of money, that he through his sister's husband Shri Bal Mukand had purchased votes on 9th January 1952 as alleged in para 10 of the petition, that the respondent either by himself or through his agents or supporters procured vehicles for carrying the voters from and to the polling stations as alleged in para 11 read with list D, that one Puran s/o Nathu Nayak of village Poharka committed the offence of false personation at the instance of and with the connivance of respondent No. 1 that the ballot boxes used in the election were defective in so far that they could be opened without breaking their seal, on account of which the election was not a fair election, that the respondent authorised the appointment of the persons mentioned in para 14 of the petition in contravention of the provisions of Act 43 of 1951 and rules made thereunder, and that the return of election expenses submitted by the respondent was incorrect and false in many material particulars as alleged in para 15. The petitioners pray on these allegations that the election of Ch. Devi Lal from the Sirsa constituency to the Punjab Legislative Assembly be declared void and a fresh election may be ordered, and also that the returned candidate being guilty of corrupt and illegal practices be disqualified for a period of at least 5 years. Along with the petition the petitioners have filed lists, A, B, C, D and E of paras 7, 8, 10, 11 and 12 respectively.

This petition was contested by Ch. Devi Lal, the returned candidate, on whose behalf a preliminary objection was taken to the effect that the petitioners had not complied with the mandatory provisions of section 83 of the Representation of the People Act, 1951, in so far that no complete lists of full particulars of the allegations made in paras 8, 9, 10, 14 and 15 had been furnished. While on behalf of the petitioners it was stated that the list, furnished were quite complete and in accordance with law and nothing further was needed. It was, however, stated : it was found that further particulars or lists were needed, the petitioners were prepared to amend and give better particulars. A preliminary issue on the above preliminary point was struck and it was decided by the Tribunal by its order dated 3rd February 1953 which order will be read as a part of this judgment. By this order the tribunal allowed the petitioners to amend the lists and give full particulars of the corrupt and illegal practices which they attributed to the returned candidate and they were also allowed to make the necessary addition in para 10 of their petition.

After the abovementioned order the lists and particulars in question were amended.

The respondent No. 1 contraverted all the allegations made against him and he pleads that his nomination paper was validly accepted that he had not been guilty of any corrupt practices as alleged, that the District Magistrate had never canvassed in his favour, that the election was quite fair, that he never procured the withdrawal of respondent No. 3 and 4 from the contest and that the return of the election expenses submitted by him was quite correct.

On the above pleadings of the parties the following issues were struck after recording the statements of Shri Devi Lal and L. Mahabir Parshad Advocate for the petitioners.

No. 1. Was the nomination paper of respondent No. 1 improperly accepted by the Returning Officer for the reasons mentioned in para 6 of the petition and did this acceptance materially affect the result of the election? On petitioners.

No. 2. Did respondent No. 1 intimidate or coerce voters to vote for him, as alleged in para 7 of the petition and the particulars attached thereto?

On petitioners.

No. 3. Did the District Magistrate, Hissar, canvass for the respondent by touring in the constituency as alleged in para 9 of the petition read with para B of the t of corrupt practices? If so what is its effect? On petitioners.

No. 4. Did the respondent procure the withdrawal of the names of the respondents Nos. 3 and 4 by offering illegal gratification in the form of money? If so, what is its effect? On petitioners.

No. 5. Did the respondent through his sister's husband Sh. Bal Mukand purchase votes for the respondent on 9th January 1952, as alleged in para 10 of the petition read with list C? On petitioners.

No. 6. Did the respondent, either by himself or through his agents, or supporters procure vehicles for carrying the voters from and to the polling stations, as alleged in para 11 read with list D? If so, what is its effect? On petitioners.

No. 7. Did Puran son of Nathu Naik of village Poherka commit the offence of false personation at the instance or connivance of the respondent as alleged in para 12 read with list E? If so, what is its effect? On petitioners.

No. 8. (a) Were the ballot boxes used in the election defective or could they have been opened without breaking their seals? If so, did this fact materially effect the result of the election? On petitioners.

(b) Is the above point not triable by this Tribunal? On respondent

9. Did respondent authorise the appointment of the persons mentioned in para 14 of the petition in contravention of the provisions of Act 43 of 1951 and the rules made thereunder? On petitioners.

10. Was the return of the election expenses submitted by the respondent incorrect and false in any material particulars as alleged in para 15? If so, what is its effect? On petitioners.

Issue No. 1.—Petitioners' objections which are the subject matter of this issue are three fold, firstly that Ch. Devi Lal had a licence for selling Arms and Ammunition in Sirsa granted by the Punjab State Government, secondly that Ch. Devi Lal was a member of the Regional Transport Authority, Ambala Division, appointed by the Punjab State Government *vide* Notification dated 19th March 1951, and thirdly, that the name of respondent No. 1 was Devi Dayal and not Devi Lal, and, therefore he could not file his nomination papers in the name of Devi Lal.

As regards the first point I fail to understand how a person who holds a licence for the sale of Arms and Ammunition can be said to have interest in a contract for the performance of any services undertaken by the Government as contemplated under section 7(d) of the R.P. Act. The person concerned only held a license because it was incumbent of the Government to check free sale of Fire Arms etc., and he was under no further obligations to the Government. If at a particular time the Government supplied certain quota of arms and ammunitions to the license holders and they got a fixed commission that would not bring it within the mischief of Section 7(D). In fact no further arguments were addressed on this point.

As regards the second point it is admitted that at the time of filing the nomination paper Ch. Devi Lal was a member of the Advisory Board of the Regional Transport Authority, Ambala Division, and it is not denied that he gets T.A. and halting allowance whenever he attends the meetings of this body. Whether such membership would constitute a disqualification under section 191 of the Constitution of India is a moot point and it need not detain me for long

because the disqualification if any had been removed by the coming into force of Punjab Act No. VII of 1952 which came into force on 26th January 1950. This Act received the assent of the Governor of Punjab on the 7th August, 1952, and it is vehemently urged before me that the Legislature could not give retrospective effect to it and therefore, it is *ultra vires* of the Legislature. I, however, fail to understand what was the legal bar in the way of the legislature to give retrospective effect to it. I am not concerned with the propriety of giving such effect to it because I have to take the Act as it stands. This very point came before the Election Tribunal, Jullundur, in an election petition *Ch. Shamsher Singh Vs. Thakur Gurditt Singh and others*. The Tribunal held after discussing the point beautifully that the legislature could always make its enactment retrospective in its operation and if it did not offend any principle of constitutional propriety courts would give effect to the clear intention of the legislature, and on this view they held that section 2 of Act 7 of 1952 was *intra vires* of the Punjab State Legislation (See Gazette of India dated 7th July, 1953 pages 2273 to 2284). Again the same view was taken in an election petition decided by the Ludhiana Election Tribunal who decided this point by majority and came to the same view as the Jullundur Tribunal (See Gazette of India dated 15th July 1953). Election Tribunal Bangalore also took the same view on a similar point raised before them (See Gazette of India dated 26th March 1953 on page 933). I quite agree with the above view and my finding is that the disqualification of the returned candidate if any under this head had been duly removed before the nomination papers were filed.

As regards the third objection it is contended that Ch. Devi Lal had once attested the Mukhtarnama Ex. P.W. 50/1 as Devi Dayal and that his name in the Revenue Records was also given as Devi Dayal (See Fard Ex. P.B.). It is not denied before me that a man may be called by two names and it is also on the record that in a number of proceedings the respondent has always been known as Devi Lal, not only that but the petitioners themselves impleaded him as a respondent in the name of Devi Lal and got him served as such. There was never any dispute about his identity and no objection was ever raised before. In my opinion this objection is simply frivolous and has no force. With these remarks I decide this issue against the petitioners.

Issue No. 2.—Petitioners alleged in para. 7 of the petition that the District Magistrate, Hissar, promulgated an order under Section 144 Cr. P.C. on 24th December 1951, prohibiting the carrying in public place or any public meeting of any firearm or anything capable of being used as a weapon of offence in the Hissar district, but that subsequently in derogation of this order he by an order dated 29th December 1951 gave permission secretly to Ch. Devi Lal to keep his rifle and pistol with him at the polling stations and throughout the constituency and the returned candidate, his agents and his workers took advantage of this subsequent order and actually intimidated and coerced voters to vote for Ch. Devi Lal. As regards particulars of this intimidation and coercion they mentioned Ch. Devi Lal and six of his agents and workers to have intimidated and coerced voters and also mentioned the names of as many as 59 persons who had been intimidated and coerced.

At this stage it will be in the fitness of things to remark that the nature of the trial of an election petition is a quasi-criminal nature and in any case the Tribunals should apply the principle of proof beyond reasonable doubt in appreciating the evidence and coming to its finding. Where an act entails penalties such as in criminal case or forfeiture or loss of status such an act should be proved beyond reasonable doubt. This principle has not been contested before us and while appraising the evidence led in this case, I have applied this principle of law and consequently we will have to see whether the charges levelled against the respondent have been proved beyond reasonable doubt.

The said order of the District Magistrate which is Ex. P.W. 40/1 was promulgated on 24th December 1951 and there is nothing definite on the record to show that Ch. Devi Lal was present here i.e. at Hissar on that day. His brother Ch. Sahib Ram M.L.C., states on S.A. that he came to know of this order on 29th December 1951 when he came to Hissar and as soon as he came to know of it he made an application Ex. P.W. 40/2 on behalf of his brother Ch. Devi Lal to safeguard his interest, on which the District Magistrate passed the following order:—

"Returned. Only displaying is an offence. He can keep his arms in a concealed manner". (See Ex. P.W. 40/3). We thus find that the District Magistrate interpreted his order of 24th December 1951 in this manner and if in the presence of this order the respondent carried with him his pistol under his clothes in a concealed manner there is nothing wrong with it. To say that the respondent

was throughout carrying his pistol for which he had a license and the rifle of which he was the retainer openly to the view of all concerned is simply absurd and not worthy of belief for a moment. If it had been so, certainly the police would have taken action against the respondent. I am not prepared to believe that all the District authorities were asleep and were ignoring such actions of the respondent. Sh. Sarup Singh M.L.A. R.W. 40 and Ch. Ganga Ram M.L.A. R.W. 38, have both sworn that they were in the meeting of 24th December 1952 and Deputy Commissioner had told them that they could keep arms in a concealed manner for their safety. A number of witnesses have been produced by the petitioners to say that the respondent was going about openly with his arms during the polling days while a number of witnesses have come to depose for the respondent to say that they never saw any arms with the respondent at any time after 24th December 1951. P.W. 56, S. Richpal Singh, A.S.I. has also stated that he visited various polling stations on the polling days and had occasion to meet Ch. Devi Lal respondent but he never saw him with any arm or carrying any pistol or gun. Similarly S.I. Pritam Singh R.W. 39 makes a statement to the same effect. Malik Ganga Dhar, Magistrate 1st class, R.W. 41, who was the presiding officer at a number of polling stations has also stated that he never saw Ch. Devi Lal armed and that if he had, he would have taken action against him. I see no reason to disbelieve these responsible witnesses, who are not of partisan character. Having found that the story propounded by the petitioners to the effect ...at the respondent was carrying his arms freely and openly and was intimidating and coercing voters with his firearms is false, the main allegations of intimidation and coercion based on the above story also fall to the ground. A number of witnesses have been produced on this point who include witnesses from villages Jamal, Nirban, Rupas, Ganga, Chautala and Nathusari. Some of them i.e. Lal Chand P.W. 5, Biru P.W. 6, Budh Ram P.W. 10, Asa P.W. 11, Surja P.W. 12, Bhoma P.W. 13 and Bhagmal P.W. 14 are not even mentioned in the list. While the witnesses who have come from village Jamal belong to one family and the two witnesses Mukha and Moman of village Rupas had to admit that they were supporters of Ch. Sheo Karan Singh. These witnesses have come forward to say that they were intimidated and coerced by the respondent and they voted for him but the cat was out of the bag when we scrutinized the result of ballots and found that most of them had voted for Ch. Sheo Karan Singh and not for Ch. Devi Lal. The story of the witnesses from village Jamal is to the effect that Ch. Devi Lal visited their village on the evening of 4th January 1952 and stayed at the house of Rugha Mahajan and then Bishna Chibbi, collected persons from whom a promise was taken to the effect that they would vote for Ch. Devi Lal. This promise was given under coercion. We, however, found that both Rugha and Bishna had voted for Ch. Sheo Karan Singh and the petitioners had not dared to produce them. On the first day when evidence on this point was recorded i.e. on 16th March 1953, the *modus operandi* adopted was that Ch. Devi Lal visited the village on the evening previous to the polling day and there coerced the villagers who promised to vote for him but on the following day the story was changed and witnesses were made to say that they promised the votes of their relatives and not their own. In my opinion in a case of this nature where parties are arranged in opposite camps and belong to opposite factions it was not difficult for the petitioners to produce such witnesses, but when we applied the proper test to their evidence it came out that they were not witnesses worthy of belief. I may remark here that Ch. Devi Lal respondent is the leader of tenant movement in this District, while Ch. Sheo Karan Singh and the petitioners belong to the Landlord party and out of the petitioners, petitioner No. 1 is the person who is a big landlord and in whose land satyagraha was offered by the tenants led by Ch. Devi Lal about 3 years ago and the other 4 petitioners are related to Ch. Sheo Karan Singh and, therefore, such like evidence could be easily had but in my opinion the evidence is not worthy of credence for the above reasons. Hence, I decide this issue No. 2 against the petitioners.

Issue No. 3.—In para. 8 the petitioners alleged that Shri D. D. Kapila, Deputy Commissioner, Hissar toured in Sirsa constituency just on the eve of election on horseback and canvassed for respondent No. 1 and in list B of particulars relating to this para. they stated that the Deputy Commissioner visited village Lukhuwana on 24th December 1951 and villages Nathor, Bachair, Bani and Jagmalra, on 25th December 1951 and 26th December 1951 and further that he canvassed voters for the respondent in other places in this constituency between 20th December 1951 to 30th December 1951. We, however, find that when the case came to evidence stage the petitioners took a different turn and an attempt was made to prove that the Deputy Commissioner had toured in this constituency from 8th to 11th December, 1951, and that he had gone from Hissar to Chautala

and then to Bhaukhora, Kaluwana, Nathor, Bachair, Bani and Jagmalera. Shri D. D. Kapila was produced as P.W. 41 and he has proved this tour programme, but I fail to understand how the petitioners can go out of the particulars furnished by them on this point. It so appears that somehow the petitioners have come across a particular tour programme of the Deputy Commissioner in December, 1951, and they made it a handle to lead evidence on this point. But it shows the hollowness of their plea. Ch. Hari Ram, one of the petitioners, P.W. 57 states that he was also present in the gathering which took place before the Deputy Commissioner at Chautala Rest House on the morning of 9th December 1951, but curiously enough the name of Chautala is conspicuous by its absence in the list of particulars which again goes to show that the entire story has been fabricated on coming across the tour programme of the Deputy Commissioner. Shri Kapila has sworn as Petitioner's witness that he never advised the villagers in any way in any of the villages which he toured, to vote for any particular candidate of any party. We are not concerned with the personal view of this witness and we are only concerned what he did in his official capacity and in my opinion the witnesses that have been led by the petitioner from the villages abovementioned to prove that the Deputy Commissioner had asked them to vote for the Congress candidate is not at all worthy of belief. The witnesses are all of petitioner's party and they are the supporters of respondent No. 2 and as such they could now come forward to help their candidate who had suffered defeat at the hands of respondent No. 1. With these remarks I decide issue No. 3 against the petitioners.

Issue No. 4.—In para. 9 of the petition, petitioners allege that respondent No. 1 had procured the withdrawal of the nomination of respondents No. 3 and 4, i.e. Khub Ram and Ram Sarup by offering them illegal gratification. But this plea is frivolous and hollow as previous ones discussed above. Shri Khub Ram has appeared in the witness-box as R.W. 14 and has sworn to the effect that he never withdrew from the contest at the instance of the respondent, because according to him he was only a covering candidate for Ch. Devi Lal. Shri Ram Sarup of village Kagdana the other candidate has not been produced which fact will go against the petitioners. It is alleged that Khub Ram was approached and paid through Shri Mani Ram P.W. 59 and that Shri Ram Sarup was approached and paid through Bahadur P.W. 60. Their statements would show that they are made up witnesses and it is strange that both these persons were found by us to have voted for Ch. Sheo Karan Singh. Then how was it possible for respondent No. 1 to have approached these persons who were against him. The names of these persons came for the first time in the statement of Ch. Sheo Karan Singh which goes to show that they were brought in at a later stage. In my opinion the evidence on this issue is not at all worthy of belief. Hence I decide it against the petitioners.

Issue No. 5.—In para. 10 of the petition, petitioners alleged that Ch. Bal Mukand brother-in-law of respondent No. 1 had bribed voters of Mauj Garh, Khuian Malkana and Deewan Khora for securing their votes and in the list 'C' under this para. he mentioned the names of certain voters who had been so bribed. I however find that not a single bribed voter was produced by the petitioners and not only that no witness would come forward to say that any voter was bribed in his presence except that there is the bald statement of Ch. Sardara, petitioner, who is an interested party and whose statement alone can hardly carry us anywhere. On the other hand I find that Shri Bal Mukand R.W. 21 has come in the witness Box and denied the allegations made against him. I, therefore, decide this issue against the petitioners.

Issue No. 6.—This issue has been very seriously argued by the parties' counsel and it has also invited my serious attention. According to the petitioners the workers of the respondent were caught red handed when conveying their voters from the polling station Ram Pura Bishnoian in Truck No. DLB 4846 and that on that account the respondent was guilty of a major corrupt practice as defined under Section 123(6) of R.P. Act, which runs as follows:—

"The Hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent of the conveyance of any elector (other than the candidate himself, the members of his family or his agents) to or from any polling station provided under section 25 of a place fixed under sub-section 1 of section 29 for the poll." It is not denied on behalf of the respondent that this truck had been procured on behalf of the respondent that this truck had been procured by him from its owners Shri Ram Lal, R.W. 47 and Shri Phul Chand R.W. 48. On 1st January 1952 but Ch. Devi Lal stated that he had borrowed this vehicle for conveying his workers and agents from one polling station to another during the polling days. It is also not denied that this truck was caught by the Police on 4th January 1952 at Ram Pura Bishnoian polling station when some of the voters

of Ch. Devi Lal were found seated in it. It is also admitted fact that Hukam Chand P.W. 55 was the driver of this truck. The defence version is that these voters having voted for Ch. Devi Lal were being taken to the next polling station in Risalya Khara and Chakan Bhuna for canvassing votes of their relatives. Out of the voters, about 12 were present in the truck or near the truck when the Police came upon them while remaining 10 persons were the workers of Ch. Devi Lal. Out of these persons, 6 voters, R.Ws. 21 to 24 and R.W. 33 and 35 have come in the witness box and 4 workers R.W. 26, R.W. 32, R.W. 34 and R.W. 36 have also appeared and have taken the same stand as above mentioned, and not only that but they took this stand at the earliest opportunity when they were examined by the Police soon after their capture on 4th January 1952. The evidence given by these witnesses relating to this version is, however, not very consistent and I am doubtful if the respondent would have taken this stand if his voters and workers had not taken it when they were examined by the Police. In any case if they had voted for Ch. Devi Lal that day they could not be conveyed in any vehicle from the polling station, but we have to determine whether they were conveyed at all or not. It is urged before me that Ram Rikh R.W. 26 was an agent of Ch. Devi Lal and whatever he did it on his behalf. The word "Agent" is defined under section 79 of R.P. Act, according to which agent includes an election agent, a polling agent, and a counting agent and any person who on the trial of an election petition or of an offence with respect to any election is held to have acted as an agent in connection with election with the knowledge or consent of the candidate. I am asked to hold that Ram Rikh was an agent but I do not quite agree with the arguments advanced because admittedly he was not an election agent nor a polling agent or a counting agent and to constitute him as an agent otherwise something definite in his favour on behalf of the candidate in question was certainly required. From the facts which have come on the record and from the evidence of Ram Rikh himself the only thing proved is that Ram Rikh was the supporter of Ch. Devi Lal and had been going out canvassing for him in other villages and had worked for him for about 2 months and this truck was at his disposal in the polling days. This would mean that Ram Rikh had been asked to canvass and procure voters for Devi Lal and nothing further. In my opinion such a person would not come within the definition of an agent. Even if it did he would not be authorised to act in any manner he liked and his master would only be liable for his lawful acts in the discharge of his duties. In the Indian contract Act an agent is a person employed to do any act for another or to represent another in dealing with third persons and under the contract Act the agent is not entitled to remuneration for business misconducted and the employer is not liable for criminal acts, of an agent, unless, of course, he had authorised him or had connived at it. As already remarked by me we have to interpret the evidence in this case on the principle of proof beyond reasonable doubt and if certain provisions of law or the circumstances admit of two interpretations or are of doubtful interpretation the benefit would go to the respondent. In this case it is admitted that there is no proof on the record to hold that the truck in question had been hired for the conveyance of electors but the learned counsel for the petitioners contends that the circumstances go to prove that it was so hired or procured. I, however, do not agree with him on this point. He contends that the very fact that the truck was procured on 1st January 1952 would go to show that it had been procured for conveyance of electors. But it cannot be denied that in the polling days the candidates would like to utilize every minute, and therefore this truck could have been procured for the carriage of workers and supporters of Ch. Devi Lal from one polling station to another and to canvass in his favour on the very day of the polling. The petitioners want to take different positions as it suits their purpose because when dealing with the return of election expenses it is urged that this truck had remained with the respondent for more than 2 months and therefore the return was wrong while when dealing with this issue it is urged that this truck was procured on 1st January 1952 but such contradictory positions cannot be allowed to be taken. It is next urged that this very truck was used for conveyance of electors at Odhan on 2nd January 1952 and that the very voters who had been caught at Rampura Bishnoian had been brought on the day of the polling on 4th January 1952 in this very truck. None of these allegations was mentioned in the list of particulars. It may be that the petitioners could not positively prove this instance but if they were within their knowledge as they say then they must have mentioned it in the application to help them as a circumstance in their favour, if not as an instance. They have mentioned so many other instances and particulars of which there was no proof then why these two instances were not mentioned. Malik Ganga Dhar, who was presiding officer at Odhan polling station has definitely stated that no officer complained except a general complaint of a vague nature was made to him at Odhan that any voters were being brought in a particular truck and that the driver was sent for by him and he let him go with a warning. The story of the voters having been brought to Rampura Bishnoian polling-station on 4th January 1952 also falls to the ground

if we look at the statement of Hukam Chand, Driver of this truck made by him before the Police, according to which he was at Rampura since the evening of 3rd January 1952 till he was asked to start for Chakan Bhoona (Ex. P.W. 55/1). Moreover it is said that there were some women among the voters who had been brought to the polling-station but curiously enough not a single woman was caught by the Police which goes to show that this story is quite false otherwise the women voters must have been in the truck. The absence of the women voters from the truck at the time of its capture would also go to support the defence story to the effect that the truck was going to Chakan Bhoona and not to Gauriwala as alleged by the petitioners. It is in evidence that the truck when caught was standing at a distance of 500 paces from the path of Gauriwala and was bound for Chak Bhoona and that being so if the defence story of the persons caught, who were voters of going to Chak Bhoona for canvassing is not believed then the only thing would be that they had to go back to their homes and then it is possible that Ram Rikh R.W. 26 believed in good faith that he would be doing nothing wrong if he carried some of the voters to some distance and drop them in the way when going to Chak Bhoona. The evidence led in this case about the time of the capture of the truck is very contradictory because the time of capture according to different witnesses ranges between 11 A.M. to 4 P.M. A.S.I. Tara Singh R.W. 42 was the person who actually caught this truck and according to him the time was about 4 P.M. It is true that his evidence is not very consistent but the fact remains that he was the principal man who could tell us the facts as it has come in his evidence that the truck was about to start and that some of the persons had taken their seat while some of them were standing outside the truck. This being the position I fail to understand how it can be said that this truck had been procured for the conveyance of electors. The act of conveyance would only be completed if the truck had left the place because before it left the electors could change their mind and the electors may not have travelled at all in that truck. For instance, under the provisions of Act 7 of 1946 (Essential Supplies and temporary powers Act) at different times export or import of certain commodities from one state to another was banned but the person contravening this ban could only be hauled up if he had actually crossed the border of one state to another and not when he was yet in his own state, meaning thereby that the stage of preparation did not come within the mischief. Similar is the case here because the mischief is committed by the hiring or procuring the vehicle for the conveyance of any elector and not in only attempting to do so. To set aside an election is a serious matter and if at all it may be considered that there was some technical mischief it should not be taken into consideration and if Ram Rikh believed something in good faith without the knowledge or connivance of his employee it would not come within the mischief of section 123 (6) of R.P. Act. Under all these circumstances I am of opinion that the petitioners had failed to discharge the onus which lay upon them to establish their allegations made in para II of their petition. Hence I decide this issue against them.

Issue No. 7.—One Puran Naik of village Poharka is said to have impersonated for his deceased brother Toda at the instance of respondent, but in my opinion the evidence on the record is hardly enough to connect the respondent with this impersonation. Puran Naik has not been produced, which is a serious flaw against the petitioners. It is said that when Puran Naik was caught at Mithi Surarain polling station his cause was taken up by Ch. Devi Lal respondent. But the part attributed to him is that when Puran Naik's age was challenged it was said on Devi Lal's behalf that this objection could not be taken at that stage. It might have been so but how does it mean that Puran Naik was made to impersonate by Ch. Devi Lal or his men. Puran Naik did not cast his vote for the respondent or for any body and it is quite possible that Devi Lal's party was under the impression that Puran was going to vote for them and, therefore, they took his cause regarding his age but there is nothing to show that Devi Lal or his men were in any way responsible for this illegal act of Puran. It is not uncommon that some villagers take it into their head to vote for their deceased relatives without being asked by any particular person. But whatever it may be, there is nothing to connect Ch. Devi Lal or his men with this illegal act of Puran. Hence I decide this issue No. 7 against the petitioners.

Issue No. 8(a).—The only allegation made in this connection in para 13 of the petition is that the ballot-boxes were defective and could be opened without breaking their seal and, therefore the election was not a fair election. It is true that when the counting of votes took place at Sirsa on 28th January 1952 a demonstration was given in the presence of Malik Ganga Dhar, R.W. 41, by breaking open one ballot-box without breaking its seal and a similar demonstration was given before us by Ch. Man Singh, Advocate P.W. 39. But it does not take us anywhere because it only goes to show that out of the ballot-boxes used in this constituency some had some defect, but what about all others. Not only this there-

is no allegation to the effect that this had in any way affected the result of the Election and the learned counsel for the petitioners has not been able to cite any provision of R.P. Act under which this defect would in any way help him. I, therefore, decide this issue against the petitioners.

Issue No. 8(b).—This issue does not arise in view of the above finding.

Issue No. 9.—In para 14 of the Petition it was alleged that Ch. Devi Lal authorised the appointment as agents of Ram Rikh, Kesra, Dhani Ram, Tulsi Ram, Mula, Nathu, Phool Chand and many others in contravention of the provisions of the Act 43 of 1951 and rules made thereunder. But at the time of argument, however, he could not support this allegation by any evidence on the record and the point was not seriously argued. Hence, it goes against the petitioners.

Issue No. 10.—This issue has been a very contentious issue during the whole trial and the allegation made by the petitioners in para 15 originally was that the return of election expenses submitted by the returned candidate was not only incorrect but was false also and the expenses incurred for making the application to the District Magistrate, Hissar, on 29th December 1951 were not shown even and so the payments to agents and also the cost of other expenses and that the returned candidate had not shown the expenses incurred on purchasing votes. On behalf of the respondent preliminary objection was taken to the above allegations being as vague as possible and that there was no inkling whatsoever in the whole petition of the agents said to have been paid or the costs and said to have been incurred by the respondent and this objection prevailed with us and we held that it was obligatory on the petitioners to have given particulars of these allegations. In the amended petition the petitioners added that the travelling expenses of polling agents and workers, stationery and printing charges had not been fully and correctly shown and the returned candidate incurred expenses much more than the prescribed limit. This last allegation did not find its place anywhere in the original petition and we never allowed amendment to that extent. It is a major corrupt practice to incur expenditure beyond the prescribed limit as given under section 123(7) of the R.P. Act and if it is proved the election has automatically to be avoided but since this allegation was not made originally and no amendment was ever sought on that score. Hence, it cannot be taken into consideration. It is significant to note that Issue No. 10 was also limited to the return of election expenses being incorrect and false and nothing further. This allegation, if proved, would constitute a minor corrupt practice as contemplated under section 124 of R.P. Act and that being so it will have to be proved that it was done with a corrupt motive i.e. with a view to avoid the total return expenses from exceeding the prescribed limit. The law of particulars as given under section 83(2) of R.P. Act is very strict and the petitioners were bound to give full particulars of what they wanted to challenge in the return of election expenses filed by the respondent. It is not denied that the return when filed is open for inspection and even its copies could be had and, therefore, the petitioners could have every facility if they so liked to make definite allegations. The particulars given are very vague and indefinite and I am not prepared to hold that the petitioners could attack the respondent in this matter without giving him an opportunity to meet the charges under this head. It is true that whatever point was clearly admitted by the respondent can be taken into consideration but nothing further.

The total expenses incurred by Ch. Devi Lal according to his return amounted to Rs. 6755-10-3 but according to the petitioners he had concealed or mis-stated a number of items, in order to keep his return within the limit which was clearly a corrupt practice on his part. I will now take up the various items urged before me one by one.

Item No. 1.—The register of accounts of the respondent begins from 3rd November 1951 and in this register an item of Rs. 100 which was deposited by the respondent for getting a Congress ticket to fight this election and which was not refundable is not mentioned. Petitioner's counsel contends that it was incumbent on the respondent to show this item while according to the respondent's counsel it was not an expense in connection with the election and, therefore, he need not have shown it. Respondent's counsel relies upon an election petition decided by the Election Tribunal, Bangalore, in support of his view. But I do not see eye to eye with this judgment and in my opinion it is but clear that when a candidate applied for a party ticket with the election in prospect he certainly begins to hold himself out as a prospective candidate. Hence, in my opinion the item of Rs. 100 should have been shown in the expenses. This, however, appears to be clearly a *bona fide* omission and was not shown under the belief that it was not an amount incurred in connection with the election and more over if this item is added to the amount already shown by the respondent it will not exceed the limit.

Item No. 2.—The second item challenged is about the salary of Jagdish Parshad R.W. 51 and it is alleged that his salary for the entire period during which he worked should have been shown but Jagdish Parshad definitely stated that he did not receive any other salary and he worked on payment only from 3rd December 1951 to 16th January 1952. There is nothing else on the record to show that he was paid anything more.

Item No. 3.—It is stated that the bill of printing charges etc. is stamped with one anna stamp but this one anna is not shown in the account. There is, however, nothing on the record to show that this stamp was affixed by Ch. Devi Lal from his own pocket. Hence, this item has no force.

Item No. 4.—It is said that Hari Ram driver of respondent's jeep is shown to have been paid Rs. 132 for 2 months and 6 days while according to the respondent Ch. Devi Lal he used to pay his driver Rs. 100 per month generally. Where is the proof on the record to hold that Hari Ram was really paid Rs. 100 p.m. in those days. Hari Ram's receipt is on the record and there is no material on the record to contradict it and petitioners scrupulously avoided to put in further question on this point to Ch. Devi Lal. Hence, this item has no force.

Item No. 5.—It is urged that Ram Lal's truck was hired at Rs. 15 per day and was used for about 2½ months and reliance is placed on the statement of Hukam Chand P.W. 55 in this respect. The truck owners Ram Lal, R.W. 47 and Phu Chand R.W. 48 contradict Hukam Chand on this point and Hukam Chand's statement is not at all consistent and does not even support the petitioners on certain points. According to him the truck remained with Ch. Devi Lal for about 25 days. There is nothing on the record to hold that this truck was with Ch. Devi Lal from 3rd November 1951. My attention was invited to the statement of Ram Rikh R.W. 26 before the police which statement is Ex. R.W. 26/1 but there is nothing in this statement to show that the truck was entrusted to him since 2 months by Ch. Devi Lal. It is very unsafe to rely upon the statement of Hukam Chand who is a witness of an ordinary position and had been brought to the court by the petitioners themselves.

Item No. 6.—The above remarks would also dispose of the item of the pay of Hukam Chand which according to the respondent was paid to his employer for 15 days while according to the petitioners it ought to have been paid for 2½ months while Hukam Chand himself says that the truck remained with the respondent only for 25 days. Hardly any reliance can be placed on such evidence.

Item No. 7.—It is contended that the quantity of petrol purchased by the respondent would clearly go to show that he had not used 2 or 3 vehicles during the canvassing and polling days and had certainly used more. This is a strange argument and I fail to understand under what principle of law we can act on surmises and conjectures. This disposes of objection regarding the employment of more trucks than those alleged by the respondent.

Item No. 8.—It is said that according to Ram Rikh R.W. 26 the driver Hukam Chand had got some pulleys repaired in the truck and those expenses were not shown. No question about it was put to the driver Hukam Chand and not even to the respondent and there is nothing to show that any expense was incurred on getting the pulleys repaired if at all there was such a repair.

Item No. 9.—It is said that the salary of Pat Ram who worked with the respondent has not been shown but there is nothing on the record to show that he was employed by the respondent and had got any salary. He was a Congress worker and the Secretary of Allenabad Congress Committee and as such he was duty and morally bound to work for the Congress candidate and, therefore, there being nothing to show that he was paid any salary it could not be urged that his salary has not been shown.

Item No. 9.—Bill Ex. R.W. 20/2 for an amount of Rs. 212-8-0 relates to printing charges paid to S. Harbans Singh, R.W. 20, and the objection raised is that this bill should have been for a much larger amount. But here again we are asked to leave our conclusions on surmises. It is urged that Harbans Singh's register Ex. R.W. 20/1 is not properly kept. But I fail to understand how the respondent is liable for it. It is further urged that the price of paper used in printing posters is not mentioned in the bill but there is nothing to show that any other paper was purchased for these posters. We find that in the accounts register there is an item of Rs. 171 relating to the purchasing of paper and it is quite possible that this paper was spent on posters etc. and there is nothing to show against it.

Item No. 10.—The next item taken up is about depreciation of the jeep of Ch. Devi Lal. It is said that the respondent had shown the depreciation of the other jeep and truck used by him but he had not done so about his jeep. I, however, find

that there is no evidence to prove the alleged depreciation which cannot be presumed and had to be proved.

Item No. 11.—It is urged that polling programmes were purchased on 24th December 1951 for Rs. 2-12-0 but the expenses of the person who purchased it from Hissar are not shown in the amount. There is nothing on the record to show that such expenses were incurred. Hence there is no force in this contention.

Item No. 12.—It is argued that the expenses of the persons who purchased voters' lists, election literature, paper, carbon paper, voters' list etc. etc. shown in the account had not been shown in the expenses but I failed to understand how we can presume that any such expense was incurred. In my opinion there was no proof that any such expense was incurred and that being so nothing could be shown in the expenses.

Item No. 13.—Two affidavits were attached according to the rules with the return of expenses but the amount spent on them not shown in the return. I doubt very much if it was at all expense in connection with election because the election was over when the result was declared, and the seat was filled.

Item No. 14.—Last and not the least is the alleged expense on the application Ex. P.W. 40/2 which was made by Ch. Sahib Ram on 31st December 1951. Ch. Sahib Ram has sworn in the witness box that he incurred no expense on making his application and there is nothing on the record to show that he had incurred any amount. Hence, this item could not be shown. I have already remarked above that the particulars of practically all these items had not been furnished by the petitioners and they wanted to take the respondent by surprise which law does not contemplate and the petitioners could not, therefore, take up the various terms in this haphazard manner.

Item No. 15.—It was half-heartedly argued that the items on the credit side were not correctly shown but the learned counsel could not tell us how and in what way that would effect the merits of this case. Hence, this point need not detain us.

I am therefore of the opinion that the petitioners had failed to establish that the return of election expenses submitted by the respondent was incorrect and false as alleged and, therefore, issue No. 10 is also decided against the petitioners.

In view of the above discussion I am of the opinion that this election petition fails and I order accordingly. As regards costs I am of the opinion that since many ticklish points were involved in the case and the petitioner had been encouraged by the truck incident, the parties should be left to bear their own costs and I order accordingly. Counsels' fee Rs. 300 only.

Announced.

(Sd.) MAHARAJ KISHORE, *Chairman.*

The 27th July 1953.

I agree with the judgment of the learned Chairman.

(Sd.) GURBAKSH SINGH GYANI, *Member.*

(PER T. C. SETHI)

I have had the advantage of reading the judgment which my brother Kishore proposes to deliver, and have found myself in complete agreement with him on all issues save on issue No. 6. I have given the case my best consideration but I regret to say that I am unable to agree to his finding on this issue, and I will give my reasons for the view I take of the matter.

Issue No. 6 stands thus:—

Did the respondent, either by himself or through his agents or supporters, procure vehicles for carrying voters from and to the polling-station as alleged in para II read with list 'D', if so what is its effect? On petitioner.

In para II of his petition the petitioner alleged that the returned candidate (Ch. Devi Lal respondent), by himself and through his agents and supporters with his connivance, had procured vehicles for the conveyance of voters from and to the polling-stations. One vehicle truck No. DLB 4846, had been caught by the Police carrying voters from the polling station Ram Pura Bishnoian on 4th January 1952. The vehicle, it was contended, had been procured by the candidate or at his instance and by his connivance by his agents and canvassers and in contravention of the provision of Section 123(6) of the Representation of the People Act 43 of 1951. List 'D' also mentioned this instance against the respondent.

The relevant facts are that election in this constituency commenced—on the 2nd January 1952, with polling at Odhan. The third of January was an off day. Polling took place at Rampura Bishnoian on the 4th January and at Risala Khara

on the 5th January. Shri Ganga Dhar, Revenue Assistant—a senior officer of the Punjab Civil Service, was the presiding officer at these and some other polling stations. On the very first day of polling complaints were made to him at Odhan that voters were being brought to the polling-station in Motor vehicle and dropped about a furlong or so from the station. Shri Ganga Dhar says that he sent the police to capture such trucks but the police failed to capture any. On the 4th of January at Rampura Bishnoian a similar complaint was again made to him and he deputed A.S.I. Tara Singh R.W. 42 for this purpose, and the latter found a truck loaded with some 12 voters and 8 or 10 workers of the respondent about a few yards away from the polling-station. Hukam Chand, R.W. 55 was the driver of this truck. The police officer brought the truck together with the passengers to the polling station and produced them before the Presiding Officer who handed over the case to A.S.I. Richpal Singh P.W. 56. This police officer investigated the case, recorded statements of the voters and the workers jointly or severally and challaned the driver as he had no driving license with him.

The petitioner contend that the aforesaid truck had been hired or procured by the respondent for transporting his voters, and the voters found in the truck were his voters and had already voted for him at the aforesaid polling station.

When examined before issues, the respondent stated, 'It is, however, true that I had hired one truck No. BLG 4846, for canvassing but this truck was never used for carrying voters to and from the polling stations. It is correct that this truck was caught by the police on 4th January 1952 when it was going from the polling station Ram Pura Bishnoian to the next polling station for the next day, carrying my workers and my polling agents and my furniture. There were no voters in the truck at that time'. It is, however, abundantly proved on the record, and was frankly admitted by the respondent's learned counsel, that about 12 voters, who had already cast their votes for the respondent, were seated in the truck at the time of its capture, but it is contended that those voters were being conveyed to the next polling station for canvassing. In other words, the defence is that the aforesaid voters were transformed into workers when they were made to sit in the truck for the next polling station. It is argued that the carrying of workers and agents is no offence, though the carrying of voters is, under the electoral law.

Section 123(6) of the R.P. Act reads thus:—

"The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent, or by any other person with the connivance of a candidate or his agent for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (i) of section 29 for the poll".

It would seem that the hiring or procuring of any vehicle for the conveyance of any elector is prohibited, the only exception being that the candidate himself, a member of his family or his agent, though voters, can be conveyed in the vehicle.

Under section 79(a) of the Act "agent" is defined to include an election agent, a polling agent, and a counting agent and any person who, on the trial of an election petition or an offence with respect of any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate.

The defence, as already observed, is that the voters were being taken in the truck as canvassers or workers of the respondent. Evidently this plea was not taken by the respondent at all and is obviously the result of an after-thought. According to the terms of section 123(6), quoted above, even a worker, who is also a voter cannot be carried in a vehicle. There is no allegation, far less any evidence to the effect that these voters were the agents of the candidate concerned. Indeed it is common ground that they had never worked or canvassed before for him. It thus seems to me that the carrying of voters, even as workers or canvassers, is prohibited by law and will entail the penalties prescribed in the Act. Any other construction of the above provisions of law will land us in absurdities and render the law a dead letter. For, whenever any vehicle is captured while carrying voters to or from a polling-station, it can be said at once that they are being conveyed as canvassers or workers. Indeed, they can be taken to the village, where polling is going on, made to canvass for the candidate for a while and then brought to the polling station to cast their votes. I am, therefore, decidedly of the view that this plea is not open to the respondent, otherwise the law will be very easily circumvented, rather reduced to a dead letter.

Even if the plea were open to the respondent, the burden will be on him to prove it. The petitioner has only to prove that (i) a vehicle was procured or hired by the candidate himself or on his behalf, and (ii) for the carrying of voters

to and from the polling station. As soon as he proves these two points the burden shifts to the respondent to show that the voters had been transferred into his workers and canvassers at the time of the capture. In other words he has to prove the transformation or metamorphosis (so to say) of the voters into workers. Shri Ganga Dhar, R.W. 41 after referring to the complaints made to him at Odhan, states that at Rampura Bishnoian as well complaints were made to him that voters were being carried in vehicles upon which he sent the police to catch the truck and bring the persons to the polling station. This complaint was made between 1 and 2 P.M. and the truck and the persons seated therein were produced before him within 15 or 20 minutes whereupon he took an application, Ex. P.W. 50/2, from Ram Parkash P.W. 50, the polling agent of Shri Sheo Karan Singh, and then handed over the case to the sub-inspector for investigation.

A.S.I. Tara Singh R.W. 42, was the person deputed to capture the truck. His version is that on the complaint of Ch. Sheo Karan Singh's party to the Presiding officer that their opponent (Ch. Devi Lal) was bringing voters on motor vehicles, he was sent out between 2 and 3 P.M. to verify the complaint. He says that he first went to the way of Gauriwala and stayed there for about 2, 3 or 4 hours but could not find any motor vehicle coming on that way he then went to the other way and stayed for about half an hour but still he came across no motor vehicle. Soon after some one of Shri Sheo Karan Singh's party came running and informed him that a truck was standing adjoining the village Abadi and that villagers were getting into it, whereupon he at once went there and found that some 10 or 12 persons had taken their seats in the truck while some 7 or 8 were standing outside and the truck was just about to start and leave the place when he challaned it and stopped it. According to him the engine of the truck had been started but the truck had not yet moved when he captured it and brought it together with its inmates and produced it before the Presiding Officer at about 4 P.M.

It is evident that the above witness gives a very confusing version about the timings. If he had left the polling station at 2 or 3 P.M. and waited for 2 or 3 hours on the way to Gauriwala and half an hour on the other way, it was impossible for him to have captured the truck and produced it before the Presiding officer at 4 P.M. He is not an illiterate villager that he has no idea of time, it seems to me that he made deliberately confusing statement in order to favour the respondent. After all, the respondent is a very influential person. He himself is a M.L.A. and his real brother Ch. Sahub Ram has been winning elections to the Provincial Legislature since 1937 and even now is a member of the Legislative Council (M.L.C.) His wife's brother Ch. Ganga Ram is also an M.L.A. This family can thus boast of three members of the State Legislatures. It is, therefore, no surprising that this subordinate police officer should have tried to favour the respondent and make a confounding statement. During the evidence stage the respondent tried to show that the truck had been captured sometime in the evening and not at 1 or 2 P.M. for otherwise it would be argued that workers and canvassers could not be sent to the next polling station in the middle of the day when the polling was going on. Hence, the police officer tried to show that he had spent hours in capturing the offending truck and had captured it late in the evening. He, however, could not suppress the truth that voters were actually seated in the truck when he captured it. Another point that he made out for the respondent was that at the time of his capture he questioned the voters and was told by them that they were all going to Chak Bahoona for canvassing. This he had never given out before and there is no document or report extant to support him on this point.

A.S.I. Richpal Singh P.W. 56 was a gentleman who investigated into the above complaint. He says that at 4-30 P.M. the Presiding officer gave him the aforesaid application Ex. P.W. 50/2 for investigation and thereupon he recorded statements of all the persons found in the truck, and made the report Ex. P.W. 56/1. In this report he stated that the truck had been captured while carrying voters and workers of the respondent and the driver had no license with him and, therefore, he was being challaned under the Motor Vehicles Act. It is significant that he made no mention in this report that the voters were being conveyed as workers although this allegation had been made before him by the voters concerned.

The driver of the truck, Hukam Chand P.W. 55, states that he took voters and some workers of Ch. Devi Lal including women, in all 22 passengers, in the above truck from Gauriwala etc. to Rampura Bishnoian where polling was to take place on that day, and he reached the polling station at about 10 A.M. At about 2 P.M. about half of the voters came back to the place where the truck was standing and boarded it. The workers of Ch. Devi Lal who were there, asked him to wait for some time so that the remaining voters might turn up, and shortly after the

police arrived and captured the truck. Almost similar is the statement of Ram Parkash P.W. 50 and Lekh Ram, brother of Sheo Karan Singh respondent P.W. 51.

The contesting respondent examined his workers and six of the voters to bear him out. The workers are Ram Rikh R.W. 26, Lekh Ram R.W. 27, Surja R.W. 32, Chuni R.W. 34, Hardeva R.W. 36 and Khiali Ram R.W. 50. The voters examined are Nanoo R.W. 28, Birbal R.W. 29, Surja R.W. 30, Shoe Chand R.W. 31, Teeku R.W. 33 and Chanda R.W. 35. Their version is that after the voters had cast their votes Ram Rikh R.W. 26 told them that those who had relations in Chak Bahoona or Risala Khara etc., should wait as they would be taken in the truck to the above villages for canvassing and thereupon they boarded the truck when it was captured by the Police, the voters thereupon went to the village Gauriwalā on foot and there from few of them went that night on their camels to Risala Khara to canvass for the respondent and returned on the next morning. Birbal, however, admits that he had no relations in the above villages and did not out that night for canvassing. According to Chanda he did go out on the next day but for condolence and not for canvassing. Thus these two persons had no business to be carried in the truck. Otherwise also the story of those persons that they went on that wintry night on camels to canvass for the respondent does not appeal to me.

I have seen a detailed plan of Sirsa Tahsil and found that the boundary of Gauriwalā, to which the above voters belonged, adjoins that of Rampura Bishnoia while villages Chakan, Bahoona and Risalkhara lie to the south. There is nothing extraordinary if the voters were taken in the truck in order to drop them on the way at or near their village. The story that they were being taken as workers or canvassers does not in my opinion ring true.

It is contended that according to Hukam Chand driver he had brought some women also in the truck earlier in the day to the polling station but no woman was found in the truck at the time of its capture. It is questioned by the respondent's counsel what had become of the women. This question was not put to the driver or other witnesses of the petitioner. If Hukam Chand is to be believed, the truck was still waiting for the other voters who had yet to come. Probably they included the women voters. It is also possible that the women voters had left for their village earlier after casting their votes. Anyhow this question was not explicitly put to the witnesses concerned and has in my view no material bearing on the case.

An argument was advanced at the Bar that the truck was not in motion when it was captured and it was open to the workers to drop the voters at the polling station. It is significant that this plea was not taken in the pleadings at all and has in my view no force whatever. It is admitted by all the voters and workers, mentioned above, that the voters were being taken to the next polling station to serve as workers. There is, therefore, no question of the workers changing their mind at the time of the capture. In fact, the respondent's statement, already reproduced above, is that the truck was caught by the police when it was going from Rampura Bishnoia to the next polling station. This admission is explicit and unequivocal.

Again it is not the actual carrying of voters which is an electoral offence but the mere hiring or procuring of a vehicle for conveying the voters. As soon as the petitioner proves that a truck was hired or procured for the purpose of carrying voters to or from the polling station, the offence is complete. In practice, however it will be found difficult to prove what had motivated the candidate to procure or hire a vehicle and his motive has to be proved by the surrounding circumstances. For instance, if a vehicle is found actually carrying voters or if a vehicle is found loaded with electors and is about to start, this will furnish a very good evidence of the fact that the truck had been procured for the purpose of carrying voters. In the present case one of the voters Chanda R.W. 35, stated before the police that he had taken his seat in the truck as it was for voters (Yeh votron wala hai), thus vividly showing that the truck was known to the voter that it was meant for them.

A case, under the Essential Supplies Temporary Powers Act do not appear to me in point. Under that Act export or import of certain commodities is forbidden from one state to another, and it has been held that the offence is not committed unless the commodities cross the border of the state. It will be seen that the two Acts are not in *pari-material* and the analogy does not hold good. Under the one Act the offence consists of transporting an article from one state to another, and obviously the offence will be committed only when the article leaves the boundary of one state and enters the boundary of the other state and in the mean time the offender carrying the article is at liberty to change his mind and refuse to take it into the other state. Under the other Act i.e. the one we are dealing with, the

offence consists of hiring or procuring a vehicle for carrying voters to and from the polling station, and the actual carriage or conveyance of voters is not necessary. Hence case under the Essential Supplies Temporary Powers Act is not applicable to the present case.

Some argument was addressed to us as to the time when the truck was captured. Evidence on this point is no doubt conflicting but in my opinion this point is not material at all. I will believe the Presiding officer and hold that the truck was captured at about 2 P.M. but even then it can be said that an advance party of the respondent was being sent to the next polling station for his canvassing. It is, therefore useless to pursue this point.

Finally the respondent's learned counsel urged that it was Ram Rikh who had made the voters sit in the truck for the purpose of conveying them to their villages or to the next polling station, that the respondent himself was not then present and that Ram Rikh was not his agent and could not bind him with his own unlawful and illegal acts. Even this point, be it noted, was not taken by the respondent in his pleadings though the counsel was allowed to argue it.

It will be seen that in his pleading, of which the lists are part and parcel, the petitioner alleged that Ram Rikh along with Nathu, Moola and Surja was the agent and worker of the respondent. In List 'A' these persons are mentioned as the agents and workers of the returned candidate i.e. the respondent. In his reply the respondent, it is significant to observe, denied that Nathu, Moola and Surja were his agents or workers, but not a word was said about Ram Rikh. It is, therefore clear that Ram Rikh was taken for granted that he was the respondent's worker and agent. I failed to see how the respondent can now resile from this position.

Again Ram Rikh had admittedly worked for the respondent for about two months in the last election. It is also admitted that the truck was given to him by the respondent, say for the carrying of workers. Since Ram Rikh was an agent and a huge vehicle like motor truck was placed at the disposal just a day before the election started, it was the duty of the respondent to see that the truck was not misused by his agents or workers.

In this connection it will be worth-while to quote the observations of Halsbury made in para 560 at page 288 in "the law of England" Volume XII—on Elections. The observations no doubt relate to an act of bribery but as under the electoral law bribery and the hiring of voters for conveying voters stand at par and both constitute major corrupt practice the observations will be found opposite to the present case. They are:—

"Due proof of a single act of bribery by the candidate or his agent, however insignificant that act may be, is sufficient to invalidate the election. The Judges are not at liberty to weigh its importance nor can they allow any excuse, whatever the circumstances may be, such as they can allow in certain conditions in cases of cheating or undue influence by agents. For this reason clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive. Bribery, however, may be implied from the circumstances of the case and the court is not bound by the strict practice applicable to criminal cases but may act on the uncorroborated testimony of an accomplice. The court strips the proceedings in each case of every colour, every dress and every shape to discover its real and true nature".

This court must strip the proceedings of this case of every colour, every dress and every shape to discover its real and true nature. The court cannot be duped or hoodwinked by the respondent on the spurious plea that he was not present at the relevant time. If he places a motor truck at the disposal of his workers and agents he must see, as remarked already, that the vehicle is not misused, otherwise the electoral law will be reduced to a farce. A candidate will give a motor vehicle to his workers with secret instructions to carry voters, and when the truck is caught with voters he can come round and say that he was not present and that he had never authorised his men to misuse the truck.

I am clear in my mind that the charge of procuring the above vehicle for the purpose of conveying voters is proved to the hilt, and this being a major corrupt practice will invalidate the election of the respondent.

I would, therefore, accept the petition with costs and set aside the election of the respondent and declare it void. Under section 140 of the Act he has to be disqualified for being a member of any Legislature of the country for 6 years and I would order accordingly. I will assess counsels' fee at Rs. 500.

The 27th July 1953.

(Sd.) T. C. SETHI, *Member.*

ORDER

We, by majority of opinion hold that the allegations made in the election petition by the petitioners against the respondent No. 1 have not been proved and consequently the election petition is liable to be dismissed and we order accordingly. Parties are left to bear their own costs.

Announced.

The 27th July 1953.

(Sd.) MAHARAJ KISHORE, *Chairman.*

(Sd.) T. C. SETHI, *Member.*

(Sd.) GURBAKSH SINGH GYANI, *Member.*

ANNEXURE

IN THE TRIBUNAL OF ELECTION PETITIONS, HISSAR

In Re.

Balwant Singh etc. Vs. Devi Lal etc.

ORDER

The preliminary question for decision in this election petition is: Whether the petition does not comply with the mandatory provisions of section 83 of the Representation of the People's Act as stated by the learned counsel for the respondent in his statement dated the 24th November 1952, if so what is its effect?

The petitioners challenged the election of respondent No. 1 in the last Assembly election on various grounds, one of them being that he was guilty of corrupt and malpractices. The respondent pleaded that the petitioners had violated the mandatory provisions of section 83 and their petition was, therefore, liable to dismissal on that ground.

Section 83 sub-clause (2) lays down that "the petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice."

It is thus clear that the petition must disclose full particulars of the alleged corrupt or illegal practices attributed to the returned candidate. The petitioners' counsel contends that it is sufficient for him to detail in the list the names of the persons who committed such corrupt or illegal practice and the date and place of the commission of such practice. In our opinion it is not sufficient compliance with the law as laid down above. The ratio decidendi of the above provision seems to be that the petitioners must disclose full particulars of the alleged malpractices and must not be allowed to take by surprise the opposite party or the Tribunal at a later stage of the trial of his petition. It will be convenient to discuss seriatim the paragraphs of the present petition which in the respondent's view violate the above wholesome provision of law.

Paragraph 7.—In this paragraph the petitioners referred to some orders of the District Magistrate about the carrying of fire-arms in public places or in public meetings and averred that "the returned candidate, his agents and his workers took full advantage of the District Magistrate's said order allowing him to keep the arms at the polling stations and actually intimidated and coerced voters to vote for the returned candidate. Particulars are given in the list attached".

In the list, which accompanied the petition, the petitioners merely stated that the returned candidate had practised intimidation and coercion from the 2nd to the 16th January 1952 at certain places specified in the list.

The objection now is that the list does not disclose names of the persons intimidated or coerced. As already observed, these particulars are indispensable and must have been given in the list. If the respondent is alleged to have intimidated or coerced certain persons it was incumbent on the petitioners to have given in the list their particulars as far as possible. The list is thus faulty in this respect.

Paragraph 8.—In this paragraph the petitioners allege that the District Magistrate, Hissar, just on the eve of election, toured in the said constituency on horse back and canvassed for the respondent Balwant Singh. According to them this was interference by an executive officer of the Government and materially affected the result of the said election, particulars of which are given in the annexed list.

The aforesaid particulars will be found detailed in para B of the list which inadvertently mentions para 7 of the petition instead of para 8. This needs slight amendment.

The above list mentions the dates and the places where the Deputy Commissioner is alleged to have canvassed voters for the returned candidate. These particulars in our opinion are sufficient compliance with the law. There can, therefore, be no objection against this paragraph.

Paragraph 9.—The petitioners allege in this paragraph that the returned candidate procured withdrawal of the nomination of respondents 3 and 4 by illegal gratification in the form of money. The objection is that the list does not mention this paragraph at all and contains no particulars, but in our opinion the paragraph itself is quite explicit and gives sufficient details of the averments made by the petitioners. The objection in regard to this paragraph is therefore not sound.

Paragraph 10.—The petitioners allege in this paragraph that at Mauj Garh polling station the returned candidate on 8th January 1952 through his sister's husband Shri Balmokand paid to about 300 voters of Mauj Garh and Khuian Malkana (mostly refugees) Rs. 10 per voter and thus secured their votes. Particulars as could be ascertained are set forth in the list annexed thereto.

In the said list village Dewan Khera, besides the aforesaid two villages, is also mentioned and then three names of the voters, whose votes are alleged to have been purchased by the returned candidate, are stated. The objection now is that the numerous other voters alleged to have been purchased, are not disclosed at all and it will be open to the petitioners to catch hold of any wayfarers and produce them in court to say that they had been bribed by the respondent.

The above objection has considerable force in our opinion. It is incumbent on the petitioners to give out particulars of the said voters as fully as possible, or they will not be allowed later on to travel beyond their list. As regards the third village mentioned in the list a slight amendment is needed in the above paragraph and we can see no objection to this amendment.

Paragraph 14.—The petitioners' allegation is that the returned candidate authorized the appointment as agents of Ram Rikh of Ganga Niku of village Bani, Kesra Chamar of Kehrwala, Dhani Ram, Secretary, Market Committee, Sirsa, Tulsi Ram of village Shahpuria, Mula of village Lakhwana, Nathu of village Bharokan, Phul Chand of village Jamal and many others in contravention of the provisions of the Act 43 of 1951 and rules made thereunder.

The respondent contends that no particulars are mentioned in the list at all and it is not known to whom the phrase "many others" refers. This complaint is quite justified and it was incumbent upon the petitioners to have disclosed the names of the persons in respect of whom the respondent is alleged to have contravened the provisions of the Act. The list in this respect is faulty.

Paragraph 15.—In this paragraph the petitioners have challenged the election expenses submitted by the returned candidate and alleged that it does not mention the payments to agents and also the costs of other expenses, nor does it disclose the expenses incurred on purchasing votes.

The above allegation is as vague as possible. Not only does this paragraph find no place in the list but there is no inkling whatsoever in the whole petition of the agents said to have been paid or the costs said to have been incurred by the respondent. In our opinion the objection of the respondent must prevail as it was obligatory on the petitioners to have given the particulars of the above allegations in the list.

The petitioners' counsel prays that in case his petition is found faulty, he should be allowed to amend it in order to give full particulars required by law. Under sub-clause (3) "the Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be

amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition."

In our opinion further and better particulars, as remarked above, are necessary in order to ensure a fair and effectual trial of the petition.

Accordingly we allow the petitioners to amend the list and give full particulars of the corrupt and illegal practices which they attribute to the returned candidate. They can also add the name of the third village in paragraph 10 of their petition. They shall pay Rs. 50 as cost to the contesting respondent.

Announced

(Sd.) MAHARAJ KISHORE, *Chairman*.

(Sd.) T. C. SETHI, *Member*

(Sd.) G. S. GYANI, *Member*

The 3rd February 1952

[No. 19/192/52-Elec III/680]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy*